IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.Rev.Pet.No. 2963 of 2007()

CRA.127/2003 of I ADDL. SESSIONS COURT, KOLLAM
CC.939/1998 of JUDL.MAGISTRATE OF FIRST CLASS-III, PUNALUR

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REVN. PETITIONER: APPELLANTS/ACUSED.

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1. PRAKASH, S/O. SREEDHARAN,
   SREEBHAVAN, KAREELATHADAM,
   VANVILA WARD,PIRAVANTHOOR VILLAGE,
   PATHANAPURAM TALUK, KOLLAM.

2. PREMJITH,S/O. PRAKASH,
   SREEBHAVAN, KAREELATHADAM,
   VANVILA WARD, PIRAVANTHOOR VILLAGE,
   PATHANAPURAM TALUK, KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2963 OF 2007

Dated this the 9th day of August, 2007

O R D E R

The revision petitioners, who are a father and son, were accused Nos.1 and 2 in C.C.No.939/98 on the file of the JFCM-III, Punalur. Both of them were charge sheeted for offences punishable under sections 447, 324 and 326 read with section 34 IPC by the Sub Inspector of Police, Punalur in Crime No.419/1998. The learned Magistrate after trial, acquitted the revision petitioners of the offence punishable under section 326 IPC but convicted them for offences punishable under sections 447 and 324 IPC. For the said conviction, each of the accused was sentenced to undergo rigorous imprisonment for six months under section 324 IPC and rigorous imprisonment for one month under section 447 IPC. The said conviction was confirmed in appeal preferred by the revision petitioners. Hence, this revision.

2. The case of the prosecution as unravelled though the oral and documentary evidence adduced by the prosecution is as follows:-

CW1 Sarasamma and her sister Ammini(PW1) were two sphinster residing in the house in question. The accused had cut

and removed the branches of a cashew tree standing in the property of CW1 and PW1, who had objected to the same and the accused on the ill fated night at 7.30 p.m. on 25.7.98 trespassed into the said property and attacked CW1, PW1 and their brother PW2. The 2nd accused was carrying a reaper and a chopper. The injury sustained by CW1, who is now no more, was an incised injury on her left temple, another incised injury on the lower third of left forearm. Eventhough fracture of the skull was suspected, medical investigation showed that there was no fracture of the skull. PWs 1 and 2 were also attacked and they also sustained injuries. The conviction recorded by the courts below is after an evaluation of the oral and documentary evidence in the case and this court, sitting in the rarefied revisional jurisdiction, will be loathe to dislodge the said conviction by undertaking a re-appraisal of the oral and documentary evidence. The conviction is accordingly confirmed.

3. What now remains to be considered is the question of adequacy or otherwise of the sentence imposed on the revision petitioners. It is true that they were mounting an assault on CW1, PW1 and PW2 consequent on the latter taking exception to the

accused cutting and removing branches of a cashew tree belonging to them, I am of the view that penal servitude by way of incarceration is not warranted and that interests of justice will be adequately met by imposing an appropriate fine and directing them to compensate the injured. Accordingly, the sentence imposed on the revision petitioners is set aside and for the conviction under section 324 IPC, each of the revision petitioners is sentenced to pay a fine of Rs.4,000/- (rupees four thousand only) and on default to pay the fine, to suffer simple imprisonment for two months. For the conviction under section 447 IPC, each of the revision petitioners is sentenced to pay a fine of Rs.2,000/- (Rupees two thousand only) and on default to pay the fine, to suffer simple imprisonment for one month. From out of the fine, as and when realized, a sum of Rs.3,500/- (Rupees three thousand five hundred only) shall be paid to PW1 and a sum of Rs.2,000/- (Rupees two thousand only) shall be paid to PW2 by way of compensation under section 3571) Cr.P.C.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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